

HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b))

Description of the case.

W.P. No. 109/2000(S/S)

Sunder Lal Lekhwar

Vs

Commissioner Garhwal Division Pauri.

Approved for reporting.

~~Not approved for reporting~~

Date of decision 22/3/2006

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 109 of 2000 (SS)

Sunder Lal lekhwar s/o Sri Kamal Kishore
Patwari, Patwari Circle Kempty,
Sub Tehsil Dhanolti,
District Tehri Garhwal

..... Petitioner

Versus

1. Commissioner Garhwal Division, Pauri
2. District Magistrate, Tehri Garhwal
3. Harihar Uniyal, Patwari, Kafalpani,
4. Attached with District Headquarter,
Tehri.
5. Rameshwar Prasad, Patwari, Patwari
Circle Sunao, Sub Tehsil Dhanoli,
District Tehri Garhwal

..... Respondents

Sri V.B.S. Negi, Advocate for the petitioner.

Standing Counsel and Sri N.S. Pundir for the respondents.

Dated: March 22, 2006

Hon'ble Rajesh Tandon, J.

Heard Sri V.B.S. Negi counsel for the petitioner and
Standing Counsel and Sri N.S. Pundir for the respondents.

By the present writ petition, the petitioner has prayed for
a writ of certiorari quashing the orders dated 19.11.2000 and
2.8.2000 passed by the respondent no.1.

Briefly stated according to the petitioner, he was
appointed as Patwari in the year 1982, in District Pauri Garhwal
and thereafter he was transferred to District Tehri Garhwal in
the year 1987. The District Magistrate Tehri Garhwal prepared a

seniority list of the Patwaris in pursuance of regulation 8(2) (ka) of U.P. Awar Rajaswa Lipik Service Regulation 1958, and the name of the petitioner shown at serial number 12 in that list. In the year 1998, the respondent no. 2 invited application for the post of Bhoolekh Lipik in the office of the Collector and a selection committee was constituted consisting of one Bhoolkh Adhikari, Sub Divisional Magistrate, Kritinagar, Senior Administrative Officer and Assistant Bhoolekh Adhikari. On 26.7.1998, the petitioner as well as several candidates appeared before the Selection Committee and on the same date the selection committee declare the result orally without preparing the list. The petitioner filed objection before the District Magistrate, Tehri Garhwal raising his objection against the selection procedure. The District Magistrate rejected the objection of the petitioner on 19.11.1999. Aggrieved by the order of the District Magistrate, the petitioner filed an appeal before the Commissioner, Garhwal Division who also dismissed the appeal on 2.8.2000.

The petitioner has submitted that according to the regulation 8(2) (ka) of U.P. Awar Rajaswa Lipik Service Regulation 1958, he is entitled for consideration for the post of Assistant Registrar/Kanoongo but the respondents ignored the regulation framed under Article 309 of the Constitution of India and selected the junior candidates than the petitioner.

The petitioner has submitted that in view of the above the entire selection for the post of Assistant Registrar is illegal and arbitrary and against the law.

The petitioner has submitted that being senior most Patwari/Lekhpal in the department the petitioner is fully qualified for the post of Assistant Registrar and is entitled to be

considered for the said post but the respondents in arbitrary and discriminatory way not selected the petitioner for the post of Assistant Registrar Kanoongo. Hence, the writ petition.

Counter affidavit has been filed by respondent no. 1 and 2. They denied the allegations made in the writ petition. According to them written examination was held for promotion on the post of Bhoolekh Lipik and Assistant Registrar Kanoongo but the petitioner could not qualify the written examination and therefore, he was not considered for promotion. The respondents filed seniority list and selection list along with the counter affidavit.

Respondents no.3 and 4 have also filed counter affidavits. They also reiterated the stand taken by the respondents no. 1 and 2.

There is no controversy that promotion on the post of Junior Revenue Clerk, Registrar Kanungo and Sahayak Registrar Kanungo shall be made according to the U.P. Aur Rajsaw Lipik (Registrar Kanungo Aur Sahayak Registrar Kasnugo) Sewa Niyamawali, 1958 (hereinafter called the 'said Rules'). Procedure for selection has been given under Rule 8. Rule 8 (2) reads as under:

(2) (क) सहायक रजिस्टार कानूनगोओं की भर्ती के प्रयोजनों के लिए उन लेखपालों में से जो इस उप नियम के खण्ड (ख) के अधीन नामांकित किये गये हों ज्येष्ठता के आधार पर चयन किया जायेगा किन्तु अनुपयुक्त व्यक्तियों को नहीं लिया जायेगा ।

(ख) कलेक्टर प्रत्येक वर्ष सितम्बर में सहायक रजिस्टार कानूनगो की जिले की कोटि में हाने वाली रिक्तियों की लगभग संख्या मालूम करेगा और अपने जिले के प्रत्येक परगना अधिकारी से, शीतकालीन

दौरे के पश्चात ऐसे कुछ लेखपालों को जिनकी संख्या वह निश्चित करेगा नामांकित करने के लिए कहेगा, जिन्होंने लेखपाल के रूप में उस वर्ष की जिसमें नामांकन किया जाय पहली जनवरी को कम से कम 6 वर्षों की सेवा पूरी कर ली है राज्य की जूनियर या हाई स्कूल परीक्षा (अंग्रेजी के साथ) या उसके समकक्ष या उससे ऊँची परीक्षा उत्तीर्ण की हो जिनकी आयु उस वर्ष की जिसमें नामांकन किया जाय पहली जनवरी को 35 वर्ष से अधिक न हो ओर जो सहायक रजिस्टार कानूनगो के पद पर उन्नति पाने के लिए उपयुक्त समझे जायें किन्तु प्रतिबन्ध यह है कि उन व्यक्तियों को प्राथमिकता दी जायेगी जिनकी शिक्षा सम्बन्धी योग्यताएं ओर सेवा लेखा अधिक अच्छा होगा ।

Thus according to the rules framed under U.P. Aur Rajasw Lipik (Registrar Kanungo Aur Sahayak Registrar Kanungo) Sewa Niyamawali, 1958, promotion to the post of Assistant registrar Kanungo should be made amongst the Lekhpal who have completed 6 years service. Selection should be made strictly on the seniority basis leaving the disqualified candidates. Under the said Rules manner for selection and interview has been provided under Rule 8 (2) (Ga) (Gha), which reads as under:

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(२) l R;fu"Bk]

(३) pfj= vkj

(४) cf) oHko (intelligence) vkj ;kX;rk fdUr i kFkfdrk mu 0;fDr;k dk nh tk;xh ftudh f'k{k lEcU/kh ;kX;rk; vkj l ok y[k vf/kd vPNk gk A

The petitioner has submitted that the above rules shows that there is no mention of written examination for the purpose of promotion of Lekhpal /Patwari. The petitioner has alleged that written examination was conducted with a view to give illegal benefit to certain candidates and thus the entire proceedings for promotion is vitiated.

However, it is made clear that the main criterion for promotion is seniority. Petitioner has submitted that he is post graduate with LL. B. His service record is also good and there is no adverse remark in his character roll. Thus he should be considered first for promotion before considering the junior candidate.

In view of above, considering the fact that more than 8 years have elapsed after the alleged selection and the candidates junior to the petitioner are working on the promotional posts since then, it would be in the interest of justice that the persons juniors to the petitioners, who have already been working on the promotional posts, should be allowed to continue and the respondent no. 2 is directed to consider the promotion of the petitioner against the vacant post within a month after obtaining the certified copy of this order .

Accordingly, writ petition is allowed. A writ of mandamus is issued directing the respondents to consider the promotion of the petitioner in the light of the observations made above, within a month after obtaining the certified copy of this order.

No order as to costs.

Dated: March 22, 2006

Rajesh Tandon, J.

*Dhyani